

Filed for intro on 02/13/97
SENATE BILL 765 By
Atchley

HOUSE BILL 1064
By Chumney

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 36
and Title 26, Chapter 2, relative to exemptions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 26-2-104, is amended by adding a
new subsection thereto as follows:

(d)(1) Notwithstanding any provision of the law to the contrary, including
Tennessee Code Annotated, Section 26-2-104(c), the governing body or governing
official of a governmental entity in Tennessee responsible for the administration of a
defined benefit or defined contribution plan qualified under sections 401 or 403 of the
Internal Revenue Code, (hereinafter, the plan), shall honor claims under a qualified
domestic relations order and shall establish conditions and procedures for honoring
claims under a domestic relations order. Such conditions and procedures must be
established on or before July 1, 1997, and must contain a provision requiring the plan to
provide, upon request of the court, the member or a current or former spouse, the
projected amount of the defined benefit pension monthly payment as of the member's
normal retirement date, the account balances of any defined contribution pension
benefits, and such other information concerning any pension entitlement as may be
requested, except that the plan shall not be required to provide a present value of the
pension entitlement.

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(2) Upon furnishing such information to the court, along with a statement of the factual basis and actuarial or other assumptions, if any, underlying the estimate of the defined benefit monthly pension payment, and the balance in any defined contribution pension plan, the plan and its staff shall be exempt from personal appearance at any action or proceeding. Notwithstanding the foregoing, the plan and its staff shall make themselves available subject to reasonable notice to provide information informally or by deposition. The information shall be admissible in evidence and the matters stated therein shall be presumed true in the absence of a preponderance of the evidence to the contrary.

(3) As used in this subsection, the term “domestic relations order” shall mean a court order that provides for child support, alimony or marital property rights to a spouse, former spouse or spouses, or child of an individual who is a member of the Tennessee consolidated retirement system. The conditions and procedures for honoring such claims by the Tennessee consolidated retirement system are set forth in Tennessee Code Annotated, Section 8-36-111.

SECTION 2. Tennessee Code Annotated, Section 8-36-111, is amended by designating the existing language as subsection (a) and by adding the following as a new subsection (b):

(b) Notwithstanding any provision of the law to the contrary, the board of trustees shall promulgate rules and regulations setting forth the conditions and procedures under which the retirement system shall honor claims under a domestic relations order. Such rules and regulations shall contain, at a minimum, the following terms and conditions:

(1) The claims of a spouse, former spouse or spouses, or child shall only apply to divorce orders entered by a court after July 1, 1997;

(2) A claimant hereunder shall not be eligible for payments from the retirement system unless such payments are otherwise payable to the member in accordance with the provisions of Chapters 34 through 37 of this title;

(3) Payment to a claimant hereunder from the member's pension benefit shall not commence until the member separates from service, and the payment becomes payable to the member;

(4) Disability benefits, except disability retirement benefits, shall not be subject to the claims of a former spouse;

(5) The plan may only accept domestic relations orders that comply with the conditions and procedures required by this act and by Tennessee Code Annotated, Section 26-2-104(d), and which have been properly entered in a court of competent jurisdiction;

(6) Payments to a claimant shall not create additional liabilities for the pension fund above the reasonable necessary costs to implement the payments to the claimant;

(7) The benefit to the former spouse shall be calculated as determined by the court which enters the domestic relations order;

(8) The claimant hereunder shall receive a prorata share of any cost of living adjustments, other economic improvements or early retirement subsidies to the member's benefits on or after the date of entry of the domestic relations order;

(9) If the former spouse predeceases the member prior to the date on which payment of benefits commences, all and any claims by or through the former spouse shall cease to exist. If the former spouse predeceases the member after the date on which payment of benefits has commenced, further payments to the member and to the former spouse's estate will be governed by

the form in which the payment of benefits was selected by the parties and by the terms of a court order, if any.

(10) If the member predeceases the former spouse prior to the date on which payment of benefits commences, the former spouse will be entitled to a prorata share of any surviving spouse benefits payable. If the member predeceases the former spouse after the date on which payment of benefits commences, further payments to former spouse will be governed by the form in which the payment of benefits was selected by the parties and by the terms of a court order, if any.

(11) The member and former spouse shall execute such elections and documents as may be necessary to give effect to the division of benefits as required by domestic relations order accepted by the system under this section.

(12) The rules and regulations propounded by the system as required hereunder shall not conflict with the relevant provisions of the Internal Revenue Code or the Employee Retirement Income Security Act, or the regulations thereunder, which are applicable to the retirement system.

SECTION 3. This act shall take effect July 1, 1997, the public welfare requiring it.